C.D.S. Lines, Inc. *and* Marilyn J. Bungard. Case 6–CA–25147

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On August 9, 1993, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent filed exceptions and a brief and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, C.D.S. Lines, Inc., Canonsburg, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

''(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.''

2. Substitute the following for paragraph 2(a).

''(a) Offer to Marilyn Bungard, Ronald W. Bungard Sr., and Ronald W. Bungard Jr. full and immediate reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to seniority or other rights previously enjoyed and make them whole for any loss of pay or benefits suffered by them by reason of the unfair labor practices found herein in the manner described above in the remedy section, with interest.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discipline or discharge employees because they have engaged in concerted, protected activities.

WE WILL NOT in any like or related matter interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act. Those rights include the right to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

WE WILL offer to Marilyn Bungard, Ronald W. Bungard Sr., and Ronald W. Bungard Jr. full and immediate reinstatement to their former jobs or, if such jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights previously enjoyed, and WE WILL make them and other employees whole for any loss of pay or benefits suffered by them by reason of the unfair labor practices found in this case, with interest.

WE WILL remove from our files any references to such unlawful discharges and WE WILL notify the employees who received such discharges that this has been done and that the discharges will not be used against them in any way.

C.D.S. LINES, INC.

Patricia Scott, Esq., for the General Counsel.
John F. Cambest, Esq., of Pittsburgh, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me at Pittsburgh, Pennsylvania, upon an unfair labor practice complaint,[1] issued by the

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We have reviewed the judge's recommended Order under the standard of *Hickmott Foods*, 242 NLRB 1357 (1979), and have concluded that the narrow cease-and-desist language ''in any like or related manner'' is appropriate rather than the broad cease-and-desist language ''in any other manner'' used by the judge. We shall modify the judge's recommended Order accordingly.

[1] The principal docket entries in this case are as follows:

Charge filed by Marilyn J. Bungard, an individual, against the Respondent on December 22, 1992; complaint issued against the Respondent by the Regional Director for Region 6, on February 5,

Regional Director for Region 6, which alleges that Respondent C.D.S. Lines, Inc.,[2] violated Section 8(a)(1) of the Act. More particularly, the complaint alleges that the Respondent discharged Charging Party Marilyn J. Bungard, her husband, Ronald W. Bungard Sr. (Senior), and her son, Ronald W. Bungard Jr. (Junior) because they had engaged in concerted, protected activities, namely registering with the Respondent several complaints over unpaid wages and other terms and conditions of employment. In its answer, the Respondent specifically denied that the complaints made by Bungard related to wages, hours, and working conditions of its employees but ''stemmed from her refusal to follow clearly defined and promulgated company rules, regulations, and procedures, particularly with respect to travel routes for pickup and delivery, the provisions of the drivers' manual pertaining to equipment care and maintenance and unauthorized use of company equipment,'' and stated that the allegations pertaining to Senior and Junior ''were immaterial and irrelevant'' to the complaint since Senior and Junior did not file the charge in this case. Respondent further answered that ''any action taken . . . towards the complainant was predicated solely upon the implementation and enforcement of Respondent's work rules and regulations.'' Upon these contentions the issues herein were joined.[3]

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES ALLEGED

From its headquarters and terminal at Canonsburg, Pennsylvania, the Respondent operates a large trucking business which delivers freight from coast to coast. It claims to be one of the largest refrigerated motor carriers in the United States. Respondent also hauls freight for the Pittsburgh Plate Glass Company. A typical run would be to deliver glass from Canonsburg to California and return with a shipment of fruit destined for an East Coast store or warehouse. In its operation it uses about 240 team drivers and approximately 25 solo drivers. Whenever possible, Respondent tries to employ husband and wife teams in its over-the-road operation and has about 10 such teams at the present time. Respondent is a nonunion company and has no bargaining history. All of its employees are compensated on a mileage basis. Team drivers are expected to drive their assigned runs straight through from coast to coast, using the bedding facilities built into the cab of each truck for sleeping while the other driver continues at the wheel. Motel expenses to a maximum of $50 a day are reimbursed only on occasions when there is a layover or breakdown. A typical coast-to-coast roundtrip takes about 6 days and 2 such runs in immediate succession are normally assigned to a team, followed by 4 of 5 days off duty. While on the road, drivers are expected to call the dispatcher regularly to report any mishaps, to notify the Company of completed deliveries and any problems which might occur in the course of making deliveries, and to get return assignments. While at home, drivers are expected to call in each day except Sunday to see if they have been given an assignment.

On July 10, 1992, Bungard, a driver with about 4 years' experience, and her husband, who has in excess of 15 years' experience, applied for jobs as team drivers at the Respondent's terminal in Canonsburg. They had learned about the openings from ads which the Respondent had placed in truckers' magazines. Featuring a tractor-trailer bearing the inscription ''Collective Distribution Services, Inc.,'' one such ad stated, among other things:

> $500 sign-on bonus to qualifying drivers
> New rate levels increased to $.26 per mile, loaded or unloaded
> Mention this ad source & receive $50 if hired

After submitting their applications, the Bungards took and passed written examinations, road tests, and drug screening tests.

Otto Fox, the manager of operations and safety, has the final word on the hiring of new applicants. However, most of the discussions which the Bungards had concerning their application were with Thomas Lape, the assistant operations manager.[4] In the course of these discussions, which included information concerning wages and company requirements,[5] Bungard brought up the $500 sign-on bonus mentioned in the magazine ad, as well as the other $50 bonus, and asked Lape if they would receive this money. According to Bungard, Lape said that they would get the $500 bonus if they were qualified, but did not say what the qualifications were. Lape did tell the Bungards that, if they did not experience any breakdowns, they would possibly qualify. Lape said that he knew nothing of the $50 bonus but told Bungard, ''If [the ad] said so, you should get it.'' On one occasion, while out on a trip, Bungard phoned Lape and asked when she and her husband were going to get the bonuses. Lape did not reply. Senior also asked Lape on several occasions after he was hired about payment of the bonuses but received no answer.

Lape offered them a job at 22 cents a mile to be split between both drivers. Senior objected, saying that he would not accept such a rate since he was making more money with his present employer. After checking with Fox, Lape then offered the couple a joint rate of 24 cents an hour and they accepted. He also told them that they might expect a raise

1993; Respondent's answer filed on February 22, 1993; hearing held in Pittsburgh, Pennsylvania, on June 3, 1993; brief filed by the General Counsel with me on or before June 28, 1993.

[2] Respondent admits, and I find, that it is a Pennsylvania corporation which maintains its office and place of business in Canonsburg, Pennsylvania, where it is engaged in the interstate transportation of freight. In the course and conduct of this business, it annually derives gross revenues in excess of $50,000 in the transportation of freight from the Commonwealth of Pennsylvania directly to points and places outside the Commonwealth of Pennsylvania. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. There is no labor organization involved in this case.

[3] The errors in the transcript have been noted and corrected.

[4] The conversations which the Bungards held with Lape are uncontradicted in this record, since Lape was not summoned to testify.

[5] When asked if their interviews included any discussions about Company benefits, Bungard replied that there were no company benefits.

at the end of 90 days and a second raise at the end of a year. Their first run began on or about August 8.[6]

Junior had worked for the Respondent in 1986 for a short period of time. On or about September 11, 1992, he applied for a driving job with the Respondent and was immediately hired. He was assigned to drive as a team with another driver who quit after their first run. He was then assigned to a run with a second driver. While out on a run, the results of his drug screening test came back to the Company showing that he had failed the test. He was informed of the results while out on the road and instructed to return, whereupon he was discharged. The October 6 separation notice, however, indicated that Junior had voluntarily quit. The narrative description of the reason for ''discharge'' appearing on the notice indicated that Junior ''did not like running team. Found job with another trucking firm.'' The notice also indicated that he would be eligible for rehire.

Shortly thereafter, Junior submitted to a second drug screening test and passed. He was rehired by the Respondent on or about November 27. At that time, Bungard wanted to take some time off so Junior was assigned to drive with his father. They drove two coast-to-coast runs. At the end of their second run, all three Bungards were discharged.

Throughout the fall 1992, when and the Bungards were driving as a team, Bungard normally made whatever contact with the Company that was needed to be made on behalf of her team. As she explained it, her husband sometimes spoke before he thought. There was evidently some friction, from time to time, between them and the dispatchers when they called in. The Bungards complained of rudeness and lack of consideration on the part of some dispatchers. The chief dispatcher, Maureen Brazen, testifed that she received complaints from the dispatchers about the Bungards. Senior was reportedly abrupt and used obscene language, though Bungard was ''not as harsh,'' while Junior was ''impatient and demanding.'' I credit her testimony that, on a few occasions, Senior used obscene language to dispatchers and that this fact was reported to Fox. However, his remarks were never the subject of any predischarge reprimands or discipline. I credit Bungard's testimony that she never used profanity or obscenity in dealing with dispatchers or any other Company personnel.

On several occasions, the Bungards experienced breakdowns while on the road. On or about September 10, while on the Ohio Turnpike enroute from California to Massachusetts, their truck experienced a leak in the left rear air bag which made the vehicle difficult to control. They pulled over, phoned the dispatcher, and, in accordance with instructions, made arrangements to drop the trailer and bring the cab into a shop at Stony Ridge, Ohio, for repairs. Upon examination, the mechanic found that a valve regulating the air bag was defective. The air bag assembly was replaced and the drivers proceeded to their destination, arrivng about half a day late.

Sometime in October, shortly after delivering a load of glass in Los Angeles, the Bungards phoned the dispatcher to report what they felt was a damaged shield on the refrigerator reefer. They were afraid that it would affect the temperature control necessary for hauling a return load of produce. Because of uncertainty concerning the nature and extent of any damage, they were allowed to proceed to Fresno where they picked up a load of grapes. By this time, it appeared that the unit needed to be repaired so they proceeded to a repair shop and had a new reefer installed. Because of a billing problem arising from the fact that the Respondent did not have an account with the repair shop, it was necessary to call Fox to arrange for payment.

While moving skids in order to load the grapes for the return run, Senior injured his back. The pain bothered him considerably on the ride east and he called the Company to inform them of the injury. Bungard told Lape that it might be necessary for her to drive the entire trip east herself. Lape's reply was ''do what you can do.'' Later, Senior called Lape and asked if they could bring the trailer directly into the yard at Canonsburg and, presumably, have someone else finish the delivery which was destined for Massachusetts. Lape refused the request, directing them to proceed as scheduled to make the delivery. They did and then returned to the terminal in Pennsylvania. While making their return to the terminal, they were directed to pick up a load at Connellsville, Pennsylvania, and bring it with them. They complied with this request. Upon reaching the terminal, Bungard backed the truck into the yard, informed Lape that her husband had a compensable injury, and obtained a referral to the company doctor.

On or about November 6, the Bungards experienced a third breakdown at Kingman, Arizona. I credit Bungard's account of this incident. They were en route to California with a load of hazardous chemicals when Senior, who was driving, heard a warning beeper in the cab of the truck. He pulled over, looked under the hood, and found a great deal of water in the motor. As it was dark, he was unable to determine the source of the fluid. He telephoned Fox, reported the incident, and was told by Fox to stay put and to call again the following morning. The Bungards were then instructed to have the truck towed to a nearby garage and did so. A mechanic determined that a fan had come loose and had gone through the radiator. It took 2 or 3 days to repair the vehicle. On their return trip to Pennsylvania, a fuel filter broke and had to be replaced at a garage in Coalinga, California.

During their final 2 weeks of employment, Bungard remained at home and had an opportunity to examine some pay sheets which had been issued by the Company to her and her husband. She found from these documents that the Company had failed to pay both her and her husband a substantial amount in layover and breakdown pay which was owed as a part of previous weekly settlements.[7] She gave the documentation for her belief to her husband and asked him to take it to the Company's office on a Saturday late in November. He did so. The following Tuesday, when she went to the office to pick up their paychecks, she noticed that the claimed amounts were not reflected in the checks and brought the matter to Fox's attention. He told her not to

[6] Fox first acknowledged that claims for both the $500 bonus and the $50 bonus were made by Senior. He then asserted that only the claim for $50 was made by Senior. He later testified that he told ''them'' that they were not eligible for the $500 raise because Senior knew that Bungard lacked experience. I credit Bungard's testimony that, in the presence of her husband, she inquired of Lape about both bonuses. Neither employee was ever paid either bonus.

[7] The normal breakdown/layover pay is up to $50 a night for lodgings, when authorized. According to Bungard's computation, she and her husband were owed $300 apiece in backpay. Each ultimately received $200 as a result of the claim which was made.

worry about it, joking that he would take care of the matter and put all the money in her husband's check. When Bungard went back to the office the following Tuesday, December 8, to pick up their paychecks, she again found that the claimed amounts were not in the checks and asked Kathy, the payroll clerk, about it. Kathy shook her head and replied that she did not know what Bungard was talking about. They both started to look through company files to find any information which would backup the claim but were unable to locate the appropriate records because Bungard could not recall the trip numbers assigned to the trips in question. She told Kathy that she would telephone her and give her the trip numbers.

At this point Fox entered into the conversation. He told Bungard that if she would put the proper information on the settlement sheets after returning from a trip, she would not have any trouble in getting paid. Bungard insisted that she had filled out the forms correctly. Fox then became more specific, pointing out to her on the sheets what information should be placed at which locations. Again Bungard insisted that she had filled out the forms correctly.

Fox complained that he had so many drivers that it was hard to keep track of all of them and went on to accuse the Bungards of having too many breakdowns. As the dispute grew more heated, Bungard replied that the breakdowns were the fault of company equipment, arguing that she and her husband did not deliberately break down on trips simply to become stranded on the road in the middle of the night. Fox then mentioned that her husband and her son, who were on a trip to California, were currently broken down. Lape, who was also present, broke in to the conversation to say that the Bungards were experiencing an electrical problem with their truck. Fox's reply to this remark was, ''We'll take care of the Bungard boys when they come in.'' Bungard then asked him ''Otto, what do you mean by that?'', to which he replied, ''I'll take care of all three of you when they get in.''

Bungard then asked Fox if he was threatening to fire them. He mumbled an unresponsive reply, whereupon Bungard told him that, if he was threatening to fire them over faulty company equipment, she would go to the NLRB. Before the conversation concluded, she again had voiced her determination to go to the Board for assistance. After returning to her home, Bungard was able to contact her son and her husband on the road and warn them that they should expect to be fired when they returned.

The Bungards, Senior and Junior, returned from the trip to California on or about Friday, December 11. In the course of this trip, they experienced electrical difficulties which caused the taillights on the trailer to blink on and off. A sensor on the truck also ceased functioning. After clearing with the Company's office, they had the sensor fixed but took no action concerning the taillights, hoping that they could make it back to the terminal without being noticed by the police. During the trip, Junior phoned in and talked with Fox. He asked Fox for a $50 trip advance. Fox replied, ''I talked with your mother. Now you want money,'' and hung up. They were told to clean out the truck and not to call in until Monday. Normally drivers who are at home call in each day except Sunday. Both Bungards were then summoned to the office, where Fox spoke to them. He told Senior that Marilyn Bungard was ''hard'' and that, if she were his own wife, he would ''beat the hell'' out of her.

On Monday, December 14, Senior called the office to get an assignment and was told by Fox that the Company did not need him any more. He also said that the Company did not need his wife or his son. Senior asked Fox why he was being discharged and Fox replied only that ''good drives [could] find a job anywhere.'' Senior called Fox the following day and asked again why he was being discharged. Fox gave him the same reply.[8]

Over the extended weekend, the Respondent prepared notices for each of the Bungards. The documents were written out by Lape at Fox's direction. While the forms in question are styled ''separation notices,'' none of them were ever given to the employees in question. Marilyn Bungard's notice, dated December 12, indicated that she had been discharged for ''insubordination.'' In the section reserved for ''detailed explanation of reason for discharge,'' Lape wrote:

> Just a handful of problems—always breaking down, complaining about loads, a very negative attitude. When I hired this team, they asked many questions . . . at first, I was appreciative, however, after continuous calls in the pre-hire period I began to develop a suspicion that they were a bit opportunistic and demanding. After some time, my suspicions were confirmed. I never received so many phone calls at night, calls from a team broke down [sic] as I did from the Bungards. It actually became a joke at the operation office among people on call—''How many times did you hear from the Bungards?''

Her termination form indicated that she was not eligible for rehire.

Ronald Bungard Sr.'s separation notice indicated both that he was a voluntary quit and that he had been discharged for insubordination. In the narrative prepared by Lape, the form read:

> Ron we didn't seem to have many problems with. However, his family seemed to cause disturbances that led to separation.

The form indicated that Senior was eligible for rehire.

The form prepared for Ronald W. Bungard Jr., dated December 12, indicated that he had been discharged for insubordination. The narrative portion of the form read:

> Ron failed the first drug screen but we gave him the benefit of the doubt. We hired Ron and he quit us three weeks later. But we still rehired him back . . . this driver always seemed very impatient and on the last day he worked he spoke very abusively to the assistant operations manager.

The form indicated that he was not eligible for rehire.

Both Ronald Sr. and Marilyn Bungard were ultimately paid $200 apiece for the layover and breakdown pay they had claimed. Fox testified that he had paid them these sums sometime before they had been discharged but Company's

[8] In his testimony, Fox stated that he spoke at length with Senior and told him why he was being discharged. I discredit his testimony. There is no contention that Fox or anyone else spoke with Bungard or with Junior, either to inform them that they had been discharged or to discuss with them the reasons for their discharges.

records support Bungard's testimony, which I credit, that the Bungards were not paid these sums until they received their final settlement, sometime after they were discharged.

II. ANALYSIS AND CONCLUSIONS

In order to establish a violation of Section 8(a)(1) of the Act on the part of the Respondent in discharging the Bungards, it is necessary to establish that they had engaged in activity which was both concerted and protected and that such activity was the cause, in whole or in part, of the discharges. ''[I]t is obvious that higher wages are a frequent objective of organizational activity, and discussions about wages are necessary to further that goal.'' *Jeanette Corp. v. NLRB*, 532 F.2d. 916, 918 (3d Cir. 1976).'' [D]issatisfaction due to low wages is the grist on which concerted activity feeds.'' Supra at 319.

In repeatedly pressing their claim for the $50 and $500 hiring bonuses with members of Respondent's management, both Ronald Sr. and Bungard, who were hired at the same time as a husband and wife team, were acting for each other with respect to a matter which has always been regarded as protected activity. In pressing their later claim for unpaid wages, Bungard was acting for her husband as well as herself and at his express request. When, during his last trip with the Respondent, Junior phoned Fox and asked for a $50 trip advance, he was met with a response from Fox indicating that the Respondent regarded him as part and parcel of an effort on the part of the entire Bungard family to make the Respondent pay out money that he was extremely reluctant to part with. Fox simply slammed down the phone on Junior after complaining to him that his mother had also been irritating him in her quest for backpay which she felt was due and owing.

In Bungard's separation notice, Lape wrote that ''after continuous calls in the prehire period I began to develop a suspicion that *they* were a bit opportunistic and demanding.'' (Emphasis added.) When translated this language meant that the original claims of the Bungards for bonuses played a role in her separation. Lape went on to write that ''after some time, my suspicions were confirmed.'' This is a virtual admission that the latter claims asserted by Bungard and her husband for layover and breakdown pay were instrumental in prompting the Respondent to discharge her.

The timing of the discharges, following fast upon a heated dispute between Fox and Bungard over the issue of nonpayment of layover and breakdown pay, further suggests that this dispute and not some alternative explanation was the real cause of the discharges. In fact, in the course of their discussion, Fox even suggested that he would discharge her, although he recited numerous breakdowns experienced by the Bungards as the reason which might be used as the basis of the Company's action. He did not limit his proposed action to Bungard, telling her that he would get rid of ''all of the Bungards'' when her husband and her son returned from the trip they were on. When, in fact, they did return, Fox again vented his anger at Bungard by telling her husband that he ought ''beat the hell'' out of her.

The fact that the Respondent failed and refused to give any explanation, rational or otherwise, to any of the Bungards for discharging them adds a further suspicious note to its action. The causal connection between the backpay claims and the discharge of the Bungards was further delineated when Fox stated on the stand that

> [Mrs. Bungard] was not [driving on the final run] and she was part of the entity. She came to me as a husband and wife team. She was very, very upset that this layover and breakdown pay and I received her complaints all the time about it. Every day it seemed like, right towards the end every day, Marilyn Bungard was on the phone and . . . .

In Fox's testimony, the ''straw that broke the camel's back'' was his assertion that, on their last run, Senior and Junior Bungard were late in making a delivery in Los Angeles and their lateness caused the Respondent to lose a customer. Fox was unable to explain how the alleged work deficiency on the part of these two individuals should play any legitimate role in discharging Bungard, who was home in Pennsylvania when the California deliveries were made. According to Fox, Junior and Senior left the Canonsburg terminal on a Saturday morning in ample time to deliver a load of merchandise they had brought from New Jersey for delivery at a K-Mart store in Los Angeles. The scheduled delivery time was 7 a.m. the following Monday morning. They failed to make the delivery on time and so were guilty of a dereliction warranting separation from the Company (although Senior was still deemed eligible for rehire). Fox's knowledge of what occurred in California is necessarily hearsay, even if his testimony concerning the events were to be credited. I credit Junior's account of what occurred, namely that when he and his father arrived in Los Angeles, no delivery time had even been scheduled and they had to phone the K-Mart store in order to make an appointment to unload. They unloaded on Tuesday morning and returned to Canonsburg promptly, their return trip being delayed for repair of a sensor which had broken on the truck. Accordingly, there is no factual foundation for the Respondent's description of the precise causal events surrounding Fox's explanation of the discharges at issue.

There is little similarity between the reasons asserted for the discharges, as set forth on the employees' separation notices in December, and the explanations given by Respondent's counsel in his opening statement and by Fox in his testimony at the hearing in June. In addition to the designation of ''straw that broke the camel's back,'' as discussed above, the Respondent claimed that the Bungards were insubordinate, that they used foul language to dispatchers, and that they were constantly experiencing breakdowns. By adding these makeweight reasons to an already threadbare explanation, the Respondent was simply making up its defense as it went along. Such a shifting of reasons has long been held to be a clear indicia of discriminatory or illegal intent. While Junior was not one of the two claimants whose request for backpay triggered the discharges of his parents, the Respondent treated him as part of the problem it sought to eliminate when it removed other employees who were, in its view, ''opportunistic and demanding.'' Accordingly, Junior is as much a discriminatee as his parents. In light of the foregoing, I conclude that, by discharging Marilyn Bungard, Ronald W. Bungard Sr., and Ronald W. Bungard Jr., because they had engaged in the concerted, protected activity of pressing wage demands, the Respondent violated Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. C.D.S. Lines, Inc. is now and at all times material herein has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By discharging Marilyn Bungard, Ronald W. Bungard Sr., and Ronald W. Bungard Jr., because they had engaged in concerted, protected activities, the Respondent herein violated Section 8(a)(1) of the Act. The aforesaid unfair labor practices have a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

REMEDY

Having found that the Respondent herein has engaged in certain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Since the violations of the Act found herein evidence an attitude on the part of this Respondent of total disregard for statutory obligations and the rights of its employees, I will recommend to the Board a so-called broad 8(a)(1) remedy designed to suppress any and all violations of that section of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). The recommended Order will also provide that the Respondent be required to offer full and immediate reinstatement to Marilyn Bungard, Ronald W. Bungard Sr., and Ronald W. Bungard Jr. and that it make them whole for any loss of earnings which they have sustained by reason of the discriminations practiced against them, in accordance with the *Woolworth*[9] formula, with interest thereon computed at the rate prescribed by the Tax Reform Act of 1986 for the overpayment and underpayment of income tax. *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The recommended Order will also require the Respondent to remove from the personnel files of these employees any unlawful disciplinary actions and will further require it to notify them that their files are being expunged and that the infractions formerly noted will not be used as a basis for future discipline. I will also recommend that the Respondent be required to post the usual notice advising its employees of their rights and of the results in this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The Respondent, C.D.S. Lines, Inc., Canonsburg, Pennsylvania, its officers, agents, supervisors, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or disciplining employees because they have engaged in concerted, protected activities.

(b) By any other means or in any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer to Marilyn Bungard, Ronald W. Bungard Sr., and Ronald W. Bungard Jr., full and immediate reinstatement to their former or substantially equivalent employment, without prejudice to seniority or to other rights previously enjoyed, and make them whole for any loss of pay or benefits suffered by them by reason of the unfair labor practices found herein, in the manner described above in the remedy section, with interest.

(b) Remove from its files any references to unlawful discharges or discipline of these individuals and notify them in writing that this has been done and that the discharges or discipline will not be used against them in any way.

(c) Preserve and, on request, make available to the Board and its agents for examination and copying, all payroll records, social security payments records, timecards, personnel records and reports, and other records necessary to analyze the amounts of backpay all due under the terms of this Order.

(d) Post at the Respondent's Canonsburg, Pennsylvania terminal copies of the attached notice marked ''Appendix.''[11] Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

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[9] *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[11] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''